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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/574,456	05/19/2000	Mario Elam Tremblay	7568M	7765

27752 7590 12/23/2003

THE PROCTER & GAMBLE COMPANY
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EXAMINER	
CINTINS, IVARS C	

ART UNIT	PAPER NUMBER
1724	

DATE MAILED: 12/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/574,456	TREMBLAY ET AL.	
	Examiner	Art Unit	
	Ivars C. Cintins	1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 October 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *12-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *12-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 17-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Applicant's admitted prior art. Applicant has apparently admitted that a filter having the recited components and structure is commercially available (see page 10, lines 5-6 of the specification). Applicant has further admitted that this filter inherently possesses the recited virus removal index (see page 10, lines 10-12, 15-17 and 24-26 of the specification); and therefore, this admittedly known filter is deemed to anticipate claims 17-23. The fact that this admittedly known and commercially available filter may not have previously been used to remove viruses from water is not deemed to be relevant in determining patentability for claims 17-23, since a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claims 17-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Koslow et al. (U.S. Patent No. 5,922,803). The reference discloses a filter comprising a housing and a filter core, which filter core can consist essentially of some activated carbon particles and some non-carbonaceous particles (see col. 3, lines 7-10). This reference further teaches that the filter core can have a bulk density of 0.65 to 0.75 g/cm^3 (col. 3, lines 29-30), and can contain particles

having the recited mesh size (see col. 2, lines 40-45). Applicant should note that since the reference filter contains the same particles as those employed by Applicant, and since the particles in this reference filter are spaced from one another to produce a product having the same bulk density as Applicant's recited filter (see col. 3, lines 29-30), this reference filter must inherently also have the recited Virus Removal Index ("VRI").

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admitted prior art or Koslow et al., in view of Wallis et al. (U.S. Patent No. 3,770,625). Since both the admittedly known filter and the filter of Koslow et al. appear to be structurally identical to the filter recited in claims 12-16, these claims appear to differ from these prior art filters only by the recitation of "information which communicates to a user that the filter may be used to remove nano-sized pathogens from a liquid." Wallis et al. teaches (see col. 2, lines 29-30; col. 3, lines 12-13; and col. 4, line 21) that similar activated carbon filters are capable of removing nano-sized pathogens (e.g. viruses) from a liquid. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the admittedly known filter, or the filter of Koslow et al., with "information" that this filter can be used to remove viruses from a liquid, in view of the teaching by Wallis et al. that similar filters can be employed in this manner.

Applicant's arguments filed October 29, 2003 have been noted and carefully considered but are not deemed to be persuasive of patentability. Applicant argues that Koslow '803 does

not teach Applicant's invention because this reference fails to teach or suggest the removal of any virus at Applicants' sizes, or the removal of MS-2 bacteriophage. As pointed out above, claims 12-23 are product/apparatus claims, not process claims; and therefore, the fact that Koslow '803 does not suggest Applicant's intended use for this product/apparatus is not deemed to be persuasive of patentability for these claims. Applicant's remaining arguments relating to Wallis et al. have also been noted and carefully considered, but no longer appear to be relevant in view of the new grounds of rejection.

It is noted that Applicant has listed claims 24 and 25 as "withdrawn" in the response filed October 29, 2003. However, it appears that these claims were canceled in the amendment filed July 12, 2002. Appropriate correction in all future responses is required.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is (571) 272-1155. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Blaine Copenheaver, can be reached at (571) 272-1156.

The centralized facsimile number for the USPTO is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-0987.

Ivars Cintins

Ivars C. Cintins
Primary Examiner
Art Unit 1724

I. Cintins
December 12, 2003